IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9559 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUKUN RESIDENCE - Petitioner(s)

Versus

JAMNAGAR MAHANAGAR PALIKA & 1 - Respondent(s)

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Appearance :

MR TV SHAH for Petitioner(s) : 1,
MS SEJAL K MANDAVIA for Respondent(s) : 1,
MR NK MAJMUDAR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 17/11/2005

ORAL JUDGMENT

Though called out twice, learned advocate for the petitioner was absent on each occasion.

2. In the present petition, the petitioner has

challenged the Resolution No.131 of the General Board of the Jamnagar Municipal Corporation dated 19.6.2004. In nutshell, the challenge of the petitioner is against the acceptance of the offer of one R.B.T. Developers, respondent No.2 herein, for purchase of plot No.71/B of T.P.Scheme No.2 of Jamnagar admeasuring 2003.53 sq. meters. The case of the petitioner before the Court is that the said land belonging to the Jamnagar Municipal Corporation was agreed to be sold in favour of respondent No.2 without proper publicity and at a price which is much lower than the correct market value of the land in question.

3. On 13.10.2004, this Court noticed several irregularities in the action of respondent No.1 in accepting the offer of respondent No.2. Learned Judge also noted the offer of the petitioner that the petitioner is ready to offer a rate of Rs.2750/- per sq. meter for the land in question. The learned Judge, however, observed that it would be open to the petitioner to make his offer, but such a course can be adopted only if the petitioner deposits a reasonable amount towards costs and for showing his bonafides. It was observed that even at the rate of Rs.2525/- per sq. meter, the total price of the land roughly comes to around Rs.50 lacs.

Finding that there were unauthorized relaxations in terms of payment and other conditions made by respondent No.1 in favour of respondent No.2, learned Judge passed the following operative order on 13.10.2004.

> "7. In view of the aforesaid, I am inclined to pass the following:
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> 7.1) Rule returnable on 15.12.2004. The ad-interim relief granted on shall continue on condition that the petitioner deposits the amount of Rs.5 lac with the Corporation on or before 1.11.2004. If the petitioner fails to deposit the amount the interim order of status-quo shall automatically stand vacated and the corporation shall be at the liberty to proceed with its resolution in accordance with law.
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> 7.2) However, if the amount is deposited by the petitioner as ordered earlier, the Corporation shall readvertise its offer with the relaxation of the condition as it has been considered for respondent No.2 and shall invite offer from the public at large and at this stage it would be open to the petitioner as well as respondent No.2 to submit their offer without prejudice to the rights and contentions in this petition.
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> 7.3) The aforesaid exercise shall be undertaken within a period of four weeks from the date of deposit of the amount by the petitioner. The report of the same shall be produced by Corporation. The matter shall be considered for passing further orders on 15.12.2004."

4. As per the above order, the petitioner was to deposit an amount of Rs.5 lacs with the Corporation on or before 1.11.2004. It was made clear that if the petitioner fails to deposit the amount, the interim order

of status quo shall automatically stand vacated and the Corporation shall be at liberty to proceed with the resolution in accordance with law. If on the other hand, the amount is deposited as directed, the Corporation shall re-advertise the proposal for sale of the land and all interested persons including the petitioner and respondent No.2 would be allowed to give their offers. This task was to be undertaken within a time bound programme.

5. Learned advocate Ms.Mandavia appearing for respondent No.1 submitted that the petitioner has not deposited any amount as directed by the Court in the order dated 13.10.2004. In the result, therefore, the order of status quo stood automatically vacated as provided in the said order. Even otherwise, when the petitioner has moved this Court making allegations of selling public property at a lower price than the correct market value, it is necessary that the petitioner establishes his bonafide by depositing a reasonable sum as may be directed by the Court. It may be noted that respondent No.1 has filed an affidavit stating, inter alia, that advertisements were given in the newspapers on several occasions calling for interested persons to give their offer. In response to the first two such

advertisements, with higher upset price, no offers were received. Upset price therefore, had to be reduced in the third attempt. In response to these advertisements, the petitioner never gave his offer. It is therefore all the more necessary that the petitioner shows his seriousness about participating in the exercise to sell the plot in question. As noted earlier, even as per the offer of the petitioner, the total sale price of the land in question would exceed Rs.50 lacs. The entire exercise of re-advertising the proposal for sale sale and of setting aside the resolutions passed by the Municipal Corporation in favour of respondent No.2 cannot be undertaken unless and until the petitioner establishes his bonafides and seriousness. Precisely for the said purpose, this Court had directed the petitioner to deposit a sum of Rs.5 lacs latest by 1.11.2005. In fact it is noted by the learned Judge in the order dated 13.10.2004 that the petitioner had contended that he is not in a position to deposit straightway a sum of Rs.50,000/- and that he would do so if his offer is accepted. Learned Judge summarily rejected such a request.

6. In sum total of the above discussion, I find that the petitioner is not serious in pursuing with this

petition. When the petitioner is permitted to bid for a plot which would fetch a price not less than Rs.50 lacs by any count, his refusal or inability to deposit an amount of Rs.5 lacs as a pre-condition to entertain his petition imposed by this Court establishes that the petitioner is not serious about his challenge.

7. In the result, I find that no further purpose will be served in entertaining this petition. The petition is therefore rejected. Rule is discharged. No order as to costs.

(Akil Kureshi, J.)

(vjn)